

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of        )  
  )  
ESTATE OF DORA A. WOOD, DECEASED,       )  
E. C. BALDWIN, EXECUTOR                    )

Appearances:

For Appellant:     Wendell P. Hubbard, Attorney at Law  
  
For Respondent:    Burl D. Lack, Chief Counsel;  
                      John S. Warren, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of E. C. Baldwin, Executor of the Estate of Dora A. Wood, Deceased, against proposed assessments of additional personal income tax in the amounts of \$572.90 for the year 1951 and \$1,246.86 for the period January 1 to April 21, 1952.

The decedent, Dora A. Wood, <sup>was</sup> a resident of California. She owned stock in three corporations, Culaman Company, Picong Company, Inc., and Lais Trading and Development Company, all of which were located in the Philippines. Mrs. Wood owned 60% of the stock of the Culaman Company and her daughter owned the remainder of that stock. This company was operated by her daughter and son-in-law. The stock of the Lais Trading and Development Company was also closely held, there being only five or six stockholders, and Mrs. Wood held the controlling interest.

The Appellant contends that credits should be allowed for income taxes paid to the Philippines on the dividends from the stock in these three corporations. The Franchise Tax Board argues that credits may not be allowed because the dividends did not have their source in the Philippines.

Section 17976 of the Revenue and Taxation Code (now Section 18001) provided for a credit "for taxes paid to (another) ... country on income derived from sources within that ... country ...."

The specific arguments of the Appellant are (1) that the case of Miller v. McColgan, 17 Cal. 2d 432, in which the Supreme Court of this State held that the source of dividends

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is at the residence of the stockholder, is no longer the law; (2) that this matter is distinguishable from the Miller case because since that decision neither stock in a Philippine corporation nor the dividends therefrom can be transferred or sent out of the Philippines without a license from the Central Bank of the Philippines; and (3) that the corporate entities of the Culaman Company and of the Lais Trading and Development Company should be disregarded in order to prevent injustice.

Arguments (1) and (2) have been considered and discussed in the Appeal of Anne Bachrach, this day decided. For the reasons stated in that opinion, the Appellant cannot prevail on those points.

No authority has been called to our attention in support of Appellant's contention that the corporate existence of two of the corporations in question should be disregarded. The general rule is that corporations and their stockholders are separate and distinct legal entities for tax purposes. Vol. 7, Mertens, Law of Federal Income Taxation, page 24. Exceptions to the general rule are limited to sham transactions and corporations lacking a business purpose. Town of Fairhaven, Mass. v. United States, 142 F. Supp. 590. Assuming that the tax credit in question would be allowable to Appellant if corporate entities were disregarded, there is a complete absence of circumstances to justify such an exception to the general rule.

O R D E R

Pursuant to the views expressed in the Opinion of this Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED; ADJUDGED AMP) DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of E. C. Baldwin, Executor of the Estate of Dora A. Wood, Deceased, against proposed assessments of additional personal income tax in the amounts of \$572.90 for the year 1951 and \$1,246.86

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for the period January 1 to April 21, 1952, be and the same is hereby sustained.

Done at Sacramento, California, this 22nd day of July, 1958, by the State Board of Equalization,

George R. Reilly, Chairman

J. H. Quinn, Member

Robert E. McDavid, Member

Paul R. Leake, Member

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ATTEST: Dixwell L. Pierce, Secretary